

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill allows fees to be imposed by competent courts of jurisdiction in certain situations and provides for criminal penalties for unregistered persons.

B. EFFECT OF PROPOSED CHANGES:

The bill amends certain sections of chapter 717, F.S., relating to the disposition of unclaimed property.

Current Situation

The Florida Disposition of Unclaimed Property Act¹ (the "Act") provides the obligations of the "holder" of property presumed abandoned and provides a mechanism for the disposition of unclaimed property. Under the Act, the Department of Financial Service's (Department) Unclaimed Property Program is responsible for receiving property, attempting to locate the rightful owners, and returning the property (or its value in cases of sold securities) to them. The general purpose of the Act is to protect the interest of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Owners have the right to claim their property at any time.

Unclaimed property constitutes any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes. Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department. If the property remains unclaimed, all proceeds (up to \$15 million) from abandoned property are then deposited by the Department into the Unclaimed Property Trust Fund.

Proposed Changes

Reporting

The bill lessens due diligence requirements to be more consistent with those required by other states. The bill revises the reporting requirements for holders of inactive accounts of unclaimed property to require the holder to send written notice to the unclaimed property's last known address within 120 days prior to filing the initial report to the Department. The initial report must be filed with the Department before May 1, of each year. The bill removes the requirement that the holder conduct searches for the apparent owner of unclaimed property.

Sale of Firearms

The bill requires that, in the cases of unclaimed firearms or ammunition, the delivery of ammunition or firearms by the holder to a law enforcement agency will be done pursuant to current procedure for lost or abandoned property² requiring a public sale by competitive bidding. If the firearm or ammunition is sold, the balance of the proceeds are to be deposited into the State School Fund.

¹ See chapter 717, F.S.

² See s. 705.103, F.S.

Unclaimed Stock

The bill provides that unclaimed stock or other equity interests of business associations that cannot be cancelled and registered in the Department's name or that cannot be liquidated and converted into United States currency may be sold for the value of the certificate or destroyed pursuant to s. 717.128, F.S.

Unclaimed Property Claims

Currently, a claimant of unclaimed property may produce a notarized sworn statement to the Department which affirms the claimant's identity in lieu of a photographic identification. The bill requires a claimant to produce a photographic identification to the notary in this case and also requires that the notary provide the notary's full address on the sworn statement.

The bill also provides that any claim filed for the unclaimed property of a decedent whose estate has not been probated, whose estate is not subject to a pending probate, or for which small estate accounts³ is void.

The bill also removes references to a "power of attorney" replacing that with "recovery agreement" to conform.

Inactive or Dissolved Corporations

Claims on behalf of an inactive or dissolved corporation for which the last annual report is not available from the Department of State through the internet must be accompanied by a uniform resource locator for the address of a free internet site operated by the state of incorporation of the corporation that provides access to the last corporate filing identifying the officers and directors of the corporation. If available, the claim must be accompanied by a printout of the officers and directors from the Department of State's Internet site or the free internet site operated by the state of incorporation of the corporation. If the free site is not available then the claim must be accompanied by an authenticated copy of the last corporate filing identifying the officers and directors from the appropriate authorized official of the state of incorporation.

In cases of making claims on behalf of a dissolved or inactive corporation, the person acting on behalf of the corporation may produce a notarized sworn statement in lieu of a photographic identification. However, a photographic identification must be produced to the notary in such cases and the notary must include the notary's full address on the sworn statement.

Conflicting Claims

When conflicting claims have been received by the Department, the bill provides the property will be remitted in the following order:

- To the person submitting the first claim received by the Department;
- To the claimant if the claimant's claim and a claimant's representative's claim are received by the Department on the same day and both are complete;
- To the buyer if a buyer's claim and a claimant's claim or a claimant's representative's claim are received by the Department on the same day and the claims are complete; or
- To the claimant's representative who has agreed to receive the lowest fee as between two or more claimant's representatives' claims received by the Department.

³ See s. 717.1243, F.S.

If two or more of the claimant's representatives whose claims received by the bureau of unclaimed property were complete or made complete on the same day are charging the same lowest fee, the fee shall be divided equally between the claimant's representatives.

If more than one buyer's claim received by the Department is received on the same day, the Department shall remit the unclaimed property to the buyer who paid the highest amount to the seller. If the buyers paid the same amount to the seller, the Department shall remit the unclaimed property to the buyers divided in equal amounts.

A buyer's sole remedy shall be against the claimant's representative or the seller, or both. A claimant's representative's sole remedy, if any, shall be against the buyer or the seller, or both. A claimant's or seller's sole remedy, if any, shall be against the buyer or the claimant's representative, or both.

Attorneys Fees

The bill provides that if any estate seeks to obtain an order from a circuit court sitting in probate directing the Department to pay or deliver to any person property paid or delivered to the Department, then the estate will be ordered to pay the Department reasonable costs in any proceeding. Current law makes this payment discretionary.

The bill creates a new section of law requiring attorney's fees to be paid by any person who files a petition for writ of garnishment to the Department should the Department bring an action to oppose, appeal, or collaterally attack the petition of writ.

Small Estate Accounts

The bill provides that the Department may require such information on an estate affidavit as necessary to make a determination of entitlement and allows the use of live testimony in lieu of the affidavit in establishing entitlement.

Retention of Records

The bill clarifies that every claimant's representative and buyer of unclaimed property must retain records for at least 3 years.

The bill also removes a requirement that a holder report and pay amounts that can be estimated from available records if the holder fails to maintain records.

Fines

The bill provides that a court of competent jurisdiction may impose fines against any person found to have violated any provision of this chapter. Currently, only the Department may impose fines.

Civil Enforcement

The bill broadens enforcement provisions by providing that the following actions constitute grounds for civil enforcement:

- Failure to comply with any provision, rule, or written agreement subject to chapter 717, F.S.;
- Fraud, misrepresentation, deceit, or gross negligence within the scope of chapter 717, F.S.;
- Fraudulent misrepresentation, circumvention, or concealment;
- Willful imposition of illegal or excessive charges in any unclaimed property transaction;
- False, deceptive, or misleading solicitation or advertising within the scope of chapter 717, F.S.;
- Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required;

- Refusal to permit inspection of books and records in an investigation or examination by the Department or refusal to comply with a subpoena;
- Criminal conduct in the course of a person's business;
- Failure to timely pay any fine imposed under chapter 717, F.S.;
- An attempt by any person to make a solicitation to enter into an agreement to assist in claiming unclaimed property unless that person is registered with the Department;
- Failure to authorize the release of records in the possession of a third party after being requested to do so by the Department; and
- Receipt or solicitation of consideration to be paid in advance of the approval of a claim.

The bill clarifies that a revoked or suspended registrant may not file an application for another registration during the revocation or suspension period. In revoking for a minimum 5-year period or suspending for a period of up to 5 years a registration previously granted under chapter 717, F.S., would not be able to reapply for registration during this period.

Prohibited Practices

The bill creates new law prohibiting the printing of claim forms unless the person is a bona-fide claimant or represents a claimant. The bill prohibits the purchase of unclaimed property or the receipt of fees from owners of unclaimed property that has not yet been reported to the Department and prohibits persons who are not registered with the Department from soliciting fees from owners of unclaimed property.

Criminal Penalties

The bill provides that any person who has purchased unclaimed property, or received fees from owners of unclaimed property that has not yet been reported to the Department and is not registered with the Department has committed a felony in the third degree as punishable by ss. 775.082, 775.083, or 775.084, F.S.

Subpoenas

The bill allows the Department to initiate an action against a holder to enforce a subpoena.

Invalid Claims

The bill provides for a Recovery Agreement form.

The bill provides for all agreements to recover unclaimed property to be in 10-point type or greater and that agreements must fully disclose that the property is held by the Bureau of Unclaimed Property as well as the physical address of the Bureau of Unclaimed Property, mailing address, telephone number, and internet address. The bill clarifies that the agreement and the disclosure are to be executed on the same day.

The bill amends the recovery agreement form to include a section providing the amount of money to be paid by the claimant's representative and a statement on the form providing that the claimant will not be liable for additional fees. The bill authorizes what may be included on the agreement, including the use of additional signature lines for more than one claimant, the placement of the name of the representative's firm, and the placement of the name and title of the claimant directly under the signature line. The bill clarifies that the order of the language in the agreement may not be altered.

Purchase Agreements

The bill provides for a Purchase Agreement form.

The bill provides that a disclosure form must fully disclose that the property is held by the Bureau of Unclaimed Property as well as the physical address of the Bureau of Unclaimed Property, mailing address, telephone number, and internet address. The bill clarifies that the claimant's government issued photographic identification must be shown to the notary who is notarizing the notarized sworn statement that is filed with claims in lieu of photographic identification and that the notary's full address must be provided on the notarized sworn statement.

The bill authorizes what may be included on the disclosure, including the use of additional signature lines for more than one claimant, the placement of the name of the representative's firm, and the placement of the name and title of the claimant directly under the signature line. The bill clarifies that the order of the language in the disclosure may not be altered.

Notification by the Department to Unclaimed Property Owners

The bill provides that it is in the best interest of the owners of unclaimed property to have the opportunity to receive the full amount of the unclaimed property returned to them without the deduction of any fees. The bill provides that the Legislature mandates that the state has an obligation to make a meaningful and active effort to notify owners of their unclaimed property. Therefore, the bill provides that it is the obligation of the state to have the first opportunity to notify unclaimed property owners that they may file a claim for their property with the Department.

In furtherance of this policy, the bill provides the following:

- Any oral agreement to claim unclaimed property on the owner's behalf which has been made on or before 90 days after the holder or examination report has been processed is void as contrary to public policy;
- Any oral or written agreement to purchase unclaimed property owned by another made on or before 90 days after the holder or examination report has been processed is void as contrary to public policy;
- No person shall enter into an agreement, or make a solicitation to enter into an agreement, that is void under this section.

The bill provides that these provisions apply to all contracts entered into or renewed on or after October 1, 2004.

Registration

The bill clarifies that the Department may revoke or deny a registration if the name of the representative's firm or agency employer might lead someone to believe the firm is a government agency or affiliated with a government agency. The bill also clarifies that the requirements to obtain a registration must be maintained in order to maintain a registration.

C. SECTION DIRECTORY:

Section 1. Amends s. 717.117, F.S., relating to reporting of unclaimed property.

Section 2. Amends s. 717.119, F.S., relating to the payment or delivery of unclaimed property.

Section 3. Amends s. 717.122, F.S., relating to the public sale of unclaimed property.

Section 4. Amends s. 717.124, F.S., relating to unclaimed property claims.

Section 5. Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.

Section 6. Amends s. 717.1241, F.S., relating to conflicting claims.

Section 7. Amends s. 717.1242, F.S., relating to restatement of jurisdiction of the circuit court sitting in probate and the department.

Section 8. Amends s. 717.1243, F.S., relating to small estate accounts.

Section 9. Creates s. 717.1245, F.S., relating to garnishment of unclaimed property.

- Section 10. Amends s. 717.1311, F.S., relating to the retention of records.
- Section 11. Amends s. 717.1315, F.S., relating to retention of records by owner's representative.
- Section 12. Amends s. 717.132, F.S., relating to enforcement, cease and desist orders.
- Section 13. Amends s. 717.1322, F.S., relating to administrative and civil enforcement.
- Section 14. Creates s. 717.1323, F.S., relating to prohibited practices.
- Section 15. Amends s. 717.1331, F.S., relating to actions against holders.
- Section 16. Amends s. 717.1333, F.S., relating to evidence, estimations, audit reports, examiner's worksheets, investigative reports, and other related documents.
- Section 17. Amends s. 717.1341, F.S., relating to invalid claims, recovery of property, interest, and penalties.
- Section 18. Amends s. 717.135, F.S., relating to the agreement to recover reported property in the custody of the department.
- Section 19. Amends s. 717.1351, F.S., relating to the acquisition of unclaimed property.
- Section 20. Creates s. 717.1381, F.S., relating to void unclaimed property agreements.
- Section 21. Amends s. 717.1400, F.S., relating to registration.
- Section 22. The bill will take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Financial Services provided the following statement:

The pre-escheat and post-escheat fee limitations may impact the private sector by decreasing fees paid by consumers. The pre-escheat purchase prohibition and the post-escheat discount limitations may impact the private sector by eliminating pre-escheat purchases and by limiting the amount that unclaimed property accounts are discounted by buyers thereby increasing amounts received by consumers for their unclaimed property. Providing for a 90-day period during which recovery or purchase agreements in favor of professional locators are void may impact the private sector by increasing the number of accounts claimed directly by consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A